

EXHIBIT 15

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 2:14-CV-05060 (JMV-JVC)

BOROUGH OF EDGEWATER,
Plaintiff(s),

vs.

WATERSIDE CONSTRUCTION, LLC; 38 COAH,
LLC; DAIBES BROTHERS, INC; NORTH RIVER
MEWS ASSOCIATES, LLC; FRED A. DAIBES;
TERMS ENVIRONMENTAL SERVICES, INC;
ALCOA, INC., et al.,
Defendant(s).

-and-

WATERSIDE CONSTRUCTION, LLC; 38 COAH,
LLC; DAIBES BROTHERS, INC.; NORTH RIVER
MEWS ASSOCIATES, LLC; and FRED A. DAIBES,
Defendant(s)/Third-Party Plaintiff(s),

vs.

NEGLIA ENGINEERING ASSOCIATES,
Third-Party Defendant(s),

-and-

ALCOA DOMESTIC, LLC, as successor in interest
to AP NEW JERSEY, INC.,
Defendant(s)/Third-Party Plaintiff(s),

vs.

COUNTY OF BERGEN and RIVER ROAD IMPROVEMENT
PHASE II, INC.,
Third-Party Defendant(s).

DEPOSITION UNDER ORAL EXAMINATION OF

FRED DAIBES

VOLUME II

DATE: July 18, 2017

REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

ESQUIRE DEPOSITION SOLUTIONS, LLC
1384 Broadway - 19th Floor
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JOB # J0613385

1 aware of any of your entities reviewing any
2 of the reports attached to the contract.

3 And your answer was?

4 A I do not recall.

5 Q Okay. And I said that is despite
6 the fact that you've been designated as a
7 30(b)(6) witness to testify on behalf of
8 those entities.

9 MR. SHAFRON: Objection to the
10 form.

11 Q Is that correct?

12 A Yes.

13 Q Thank you.

14 Okay. I want to switch to talking
15 about Building 12, okay?

16 A Okay.

17 Q Why was a decision made to not
18 demolish Building 12 in 1999?

19 A Because at the time Alcoa and I
20 felt that it would help us in future
21 development that the box, the whole big box
22 stayed.

23 Q Okay. And when did --

24 A But after the cleanup was done.
25 When the cleanup was done, before we made

1 A That is correct.

2 Q Okay. And we had discussed whether
3 Alcoa provided -- I'm sorry, whether North
4 River provided Alcoa with notice that
5 Building 12 was to be demolished before the
6 demolition occurred?

7 A Yes, we did.

8 Q And is it true that Alcoa did not
9 provide notice to -- I'm sorry, is it true
10 that North River did not provide notice to
11 Alcoa?

12 A Not before it started demolition.

13 Q Okay.

14 A But upon finding -- the minute we
15 found the tanks, we did.

16 Q And that notice was by way of
17 letters from your attorneys?

18 A Phone calls from me.

19 Q Written notice, I'm asking you
20 about.

21 A No, written notice didn't happen
22 until after.

23 Q After what?

24 A A week or two after we -- after I
25 needed to hire an attorney.

1 First of all, we were -- I called.
2 We had a good working relationship with
3 Alcoa. We called, once, twice, a third time,
4 we didn't get any response. Then we hired an
5 attorney.

6 Q Okay. So it was --

7 A If they responded in the beginning,
8 this may not be here.

9 Q Your understanding, so I
10 understand, before the demolition occurred,
11 no written notice was given to Alcoa.

12 Is that correct?

13 A That is correct.

14 Q And is it true that North River did
15 not provide the County of Bergen with notice
16 that Building 12 was to be demolished before
17 such demolition was commenced?

18 A That is true.

19 Q And that's paragraph 5 of the
20 request to admit?

21 A Yes.

22 Q And then paragraph 9 -- I'm sorry,
23 paragraph 6 of the request to admit states,
24 "Admit that North River did not seek
25 reimbursement from the County of Bergen for

1 the costs associated with the demolition of
2 removal of Building 12 pursuant to paragraph
3 4 of the multi-party agreement."

4 A That is correct.

5 Q And is it true, paragraph 7 says,
6 "Admit that North River did not request the
7 County of Bergen inspect the completed
8 efforts to demolish and remove Building 12
9 pursuant to paragraph 4 of the multi-party
10 agreement."

11 Is that correct?

12 A It is correct. We did not request
13 the county.

14 Q Okay. And paragraph 8 says, "Admit
15 that North River did not provide notice to
16 the New Jersey Department of Environmental
17 Protection that Building 12 was to be
18 demolished before such demolition was to
19 commence."

20 Do you see that paragraph?

21 A Yes, I do.

22 Q And is that correct?

23 A Yes, it is.

24 Q And then paragraph 9 says, "Admit
25 that a plan for demolition, removal and

1 remediation of Building 12 was not sent to
2 Alcoa prior to the demolition of Building
3 12."

4 Do you see that?

5 A Yes, I do.

6 Q And is that correct?

7 A Due to the fact that we didn't
8 think there was any remediation necessary.

9 Q I'm not asking you for a
10 qualification.

11 I'm asking you: Did it happen?

12 MR. SHAFRON: No, objection to the
13 form, by the way, to all of these questions
14 and answers.

15 He gave you an answer, but all of
16 those were qualified by the response in the
17 request to admit.

18 I mean, he can read those back to
19 you for the record if that's what you want to
20 do.

21 MS. PARKER: I'm not asking him to
22 do that.

23 He said he helped prepare these
24 responses. I'm asking him for the response.

25 MR. SHAFRON: And the responses are

1 there. So if you're asking him --

2 MS. PARKER: Jason, all of his
3 responses completely contradicted the
4 response you wrote here.

5 MR. SHAFRON: Not one single
6 response contradicted what's stated in these
7 responses and that's the nature of my
8 objection because you're acting as if there's
9 something that's different than what's
10 written here and there isn't.

11 Every one of these answers, it has
12 a response and an explanation of the
13 response, and if you want to ask him to read
14 those to you, he can read those to you.

15 MS. PARKER: I don't have to ask
16 him to read them. I'm asking him a question.
17 We're on paragraph 9.

18 Q It says, "Admit that a plan for
19 demolition and removal and remediation of
20 building 12 was not sent to Alcoa prior to
21 the demolition of Building 12."

22 And your answer is that that's
23 true, correct?

24 MR. SHAFRON: Objection to the
25 form.

1 MR. CORRISTON: Objection.

2 A The -- it is -- it's true that we
3 did not because we did not believe, as I was
4 trying to say, and I'll say it clearly, there
5 was any contamination.

6 So we would not have done any of
7 that based on the fact that we didn't know
8 there was tanks there. They never told us
9 about the two tanks. So why would we think
10 there's tanks there and --

11 Q I'm not asking specifically about
12 the tanks.

13 A About any contamination then.

14 Q You weren't aware that the
15 foundation -- you testified previously that
16 you were aware that the foundation --

17 A And the foundation had never been
18 removed.

19 Q Okay. Why don't we go to question
20 10. It says, "Admit that a plan for
21 demolition, removal and remediation of
22 Building 12 was not sent to the County of
23 Bergen prior to the demolition of Building
24 12."

25 A Okay.

1 MR. SHAFRON: There's no question
2 pending.

3 Q Is that correct?

4 A Admit that -- again, the same
5 answer. It was not sent because we did not
6 believe there was any contamination that the
7 county needed to get involved in.

8 Again, you have to go back. This
9 whole thing was based on the county's
10 involvement, was only based on whatever
11 material was going to be used under River
12 Road. That was the only involvement they
13 had. Since River Road was finished, we
14 didn't believe that the county had any
15 involvement.

16 MR. SHAFRON: So your answer to
17 question 10 in the answer, "Thus" --

18 MS. PARKER: Jason --

19 MR. SHAFRON: I'm asking, "Thus
20 North River Mews did not submit a plan to the
21 County of Bergen before such demolition was
22 to commence" is the answer, right?

23 MS. PARKER: Jason, that's
24 completely improper. You can't direct the
25 witness how to answer the question.

1 MR. SHAFRON: He answered it
2 already.

3 MS. PARKER: You just qualified.

4 MR. SHAFRON: No, I didn't.

5 MS. PARKER: You said thus,
6 therefore.

7 MR. SHAFRON: No, no. I read his
8 answer into the record because you just said
9 his last seven answers were in contradiction
10 to what's written here and none of them were.

11 MS. PARKER: They were.

12 MR. SHAFRON: They were not.

13 MS. PARKER: Okay.

14 MR. SHAFRON: Everyone admitted the
15 question that you asked.

16 Q Why don't we go to paragraph 10.
17 I'm sorry, paragraph 11. It says, "Admit
18 that the plan for demolition, removal and
19 remediation was not sent to the New Jersey
20 Department of Environmental Protection prior
21 to the demolition of Building 12."

22 A The same answer. Again, that is
23 correct, we did not because we did not
24 believe there was any contamination.

25 Q But does it say -- can we go back

1 to the multi-party agreement for a second?

2 And it says that "Plans" -- and I believe
3 it's paragraph 4, right?

4 Does paragraph 4 address
5 remediation or does it simply say that you
6 are to make requests for periodic
7 requisitions for demolition related to --

8 MR. SHAFRON: Objection to the
9 form.

10 It misstates the contract, but you
11 can answer.

12 A That was based on periodic
13 inspections while we were doing the
14 demolition of the large building. All of
15 that, in my opinion, became null and void 15
16 years later.

17 I'm not a lawyer, but if the
18 buildings are knocked down and 15 years later
19 we decide to knock down the last building
20 that we're told is clean, the county wasn't
21 going to pay us.

22 Q What makes you think that the
23 county wasn't going to pay you?

24 MR. SHAFRON: Objection to the
25 form. Asked and answered.

1 You can answer it one more time.

2 A Because there was no -- when we
3 finished the agreement with Alcoa, this was
4 no more money to be going to the county other
5 than if there was a contaminant found in
6 Building 12. Then we would go to Alcoa for
7 the money.

8 Q And where does it say that in this
9 agreement --

10 MR. SHAFRON: Objection to the
11 form.

12 Q -- this multi-party agreement?

13 A I don't know. You're asking me
14 what I believe was the facts.

15 Q I'm asking you what the contract
16 says.

17 A I don't know what the contract
18 says. Probably in the same paragraph where
19 it says we're not going to tell you about the
20 two hidden tanks.

21 Q Where does it say that in the
22 contract?

23 A That's what I'm saying, probably in
24 the same paragraph.

25 Q Can we go to the second set

1 third-party River Road Improvement responses
2 to Alcoa's requests to admit.

3 A What was that?

4 MR. SHAFRON: I'm sorry, I missed
5 that too.

6 Q The second set also marked in that
7 document. I marked North River's responses
8 and River Road Improvement's responses. It's
9 in that document separated by a page.

10 A Okay. What page?

11 Q I'm sorry?

12 A What page?

13 Q What page? Sure.

14 Page 5.

15 A Okay.

16 Q And I'm sorry, the request number 1
17 refers to a remedial action work plan
18 submitted to the New Jersey Department of
19 Environmental Protection.

20 Do you see that it says admit that
21 the demolition of Building 12 was not
22 completed in accordance with the remedial
23 action work plan?

24 MR. SHAFRON: I think we're looking
25 at a different document.

1 Do you see that?

2 THE WITNESS: No.

3 MR. SHAFRON: What document are you
4 looking at? I believe -- can I see what I
5 marked?

6 Hold on for a second. It must not
7 have been there.

8 MS. PARKER: Mark this as FD-29.

9 (Above-mentioned document marked
10 for Identification.)

11 A Okay.

12 Q So the first request states, "Admit
13 that demolition of Building 12 is not
14 completed in accordance with the remedial
15 action work plan submitted to the New Jersey
16 DEP and the demolition plan reviewed and
17 approved by Alcoa."

18 Are you aware of the remedial
19 action work plan that's referenced in this
20 request?

21 A Yes.

22 Q You are?

23 A I am with the remedial action work
24 plan. Which one?

25 Q That's what I'm asking you. Okay.

1 Let me just mark it.

2 A The original one?

3 Q The original one.

4 A Yes, I am aware of the original
5 one.

6 Q Why don't I mark it so that we can
7 be clear.

8 MR. CORRISTON: Can we take a
9 bathroom break?

10 MS. PARKER: Go ahead.

11 (Brief recess taken.)

12 MS. PARKER: This is FD-30.

13 (Above-mentioned document marked
14 for Identification.)

15 Q So request number 1 in the request
16 to admit directed towards defendant River
17 Road Improvement refers to the remedial
18 action work plan, and I just cited the
19 remedial action work plan prepared by North
20 River Mews June of 1997.

21 A Yes.

22 Q Okay. And the question I asked
23 was: Was the demolition of Building 12
24 completed in accordance with the remedial
25 action work plan?

1 A To answer -- well, first of all,
2 this remedial action work plan, before we
3 demolished Building 12, there was two others
4 after it.

5 Q I'm asking you with respect to this
6 one.

7 A No, it was not in respect to this
8 one, again, due to the fact that we didn't
9 know that there was any contamination.

10 Q So the answer is no, right?

11 MR. SHAFRON: Objection to the
12 form.

13 A Right.

14 Q And then, if you look at number 2
15 and it states, "River Road Improvement did
16 not provide Alcoa with notice that building
17 11 was to be demolished before such
18 demolition was to commence."

19 Do you see that?

20 A Yes.

21 Q Is that true?

22 A That is true.

23 Q Okay.

24 A Again, same answer based on the
25 fact that we didn't know that there was any